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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

IN RE: PHENYLPROPANOLAMINE  
(PPA) PRODUCTS LIABILITY  
LITIGATION,

MDL NO. 1407

This document relates to all  
actions

ORDER DENYING DEFENDANTS'  
MOTION FOR CERTIFICATION OF  
INTERLOCUTORY APPEAL OF  
DAUBERT ORDER

I. INTRODUCTION

Plaintiffs filed a motion pursuant to 28 U.S.C. § 1292(b) to certify for interlocutory appeal the Order Denying in Part MDL Defendants' Motion to Preclude Plaintiffs' Expert Opinions as to General Causation Pursuant to Fed. R. Evid. 702 and 703 and Daubert (June 18, 2003). Having reviewed the papers filed in support of and in opposition to this motion, the court rules as follows:

II. DISCUSSION

Section 1292(b) serves as a mechanism by which litigants can pursue an immediate appeal of a non-final order upon the consent of both the district court and the court of appeals. The decision whether to certify an interlocutory appeal lies within the discretion of the district court judge. The judge may certify



1 that an order involves a "[1] controlling question of law [2] as  
2 to which there is substantial ground for difference of opinion  
3 and that [3] an immediate appeal from the order may materially  
4 advance the ultimate termination of the litigation[.]" 28 U.S.C.  
5 § 1292(b). There must be "'exceptional circumstances [to]  
6 justify a departure from the basic policy of postponing appellate  
7 review until after the entry of final judgment.'" In re Cement  
8 Antitrust Litig., 673 F.2d 1020, 1026 (9<sup>th</sup> Cir. 1982) (quoting  
9 Coopers & Lybrand v. Livesay, 437 U.S. 463, 475 (1978)).<sup>1</sup>

10 Defendants assert that the court's decision finding plain-  
11 tiffs' expert opinions on stroke admissible under Daubert v.  
12 Merrell Dow Pharm., Inc., 509 U.S. 579 (1993), satisfies the  
13 standard for an interlocutory appeal under § 1292(b). They pay  
14 particular attention to the status of this proceeding as a multi-  
15 district litigation ("MDL") and as to the benefits of a single  
16 ruling from the Ninth Circuit, as opposed to the potential for  
17 multiple rulings from other circuits following the ultimate  
18 remand of the individual cases to the transferor courts.

19 The court finds that defendants fail at the outset to  
20 identify the existence of a controlling question of law as to  
21 which there is substantial ground for difference of opinion.  
22 Instead, defendants point to the benefits in an MDL case of a

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24 <sup>1</sup>See also Caterpillar Inc. v. James David Lewis, 519 U.S.  
25 61, 74 (1996) ("Routine resort to 1292(b) requests would hardly  
26 comport with Congress' design to reserve interlocutory review for  
'exceptional' cases while generally retaining for the federal  
courts a firm final judgment rule.")

1 single ruling from one circuit. Even if defendants are correct,  
2 such benefits do not excuse defendants' obligation to satisfy the  
3 requirement of a debatable legal question. Factual issues  
4 involving questions of science, together with evaluation of  
5 expert testimony, predominated the Daubert hearing. Because  
6 defendants fail to identify a single debatable controlling  
7 question of law, they fail to satisfy § 1292(b) and the excep-  
8 tional remedy of interlocutory review is not justified.<sup>2</sup>

9 III. CONCLUSION

10 For the reasons stated above, the court finds that defen-  
11 dants fail to satisfy the standard for interlocutory appeal under  
12 28 U.S.C. § 1292(b). As such, the court hereby DENIES defen-  
13 dants' motion for certification of interlocutory appeal.

14 DATED at Seattle, Washington this 28<sup>th</sup> day of July,  
15 2003.

16   
17 BARBARA JACOBS ROTHSTEIN  
18 UNITED STATES DISTRICT JUDGE  
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25 <sup>2</sup>The court also declines defendants' request, made through a  
26 letter to the court, to revise the language contained within the  
Daubert order.